

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Claims 1 through 16 are pending in the present application. Claims 7 and 8 are amended.

The applicant sincerely thanks the examiner for noting that claims 13 to 16 distinguish over the subject matter in the prior art.

In the Office Action, the drawings were objected to under 37 CFR 1.83(a) as failing to show the slidable connector and abutments which are claimed in claims 13 to 16. The drawings have been amended in the present amendment. Support for the drawing changes can now be found in the specification.

In the Office Action, claim 7 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 has been amended to clarify that the housing can be tilted about a horizontal axis of rotation that is perpendicular to the vertical extent of said housing. Support for this amendment can be found in the application on page 7, lines 15 to 18 and in the drawings at Fig. 5. Claim 8, which depends from claim 7, has also been amended for clarification and to have proper antecedent basis from claim 7.

In the Office Action, claims 13 to 16 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Office Action states that there is insufficient description with regard to how to make the slidable connector, how to connect the connector to the base, and how to dispose the slidable connector with the two abutments so that it cooperates with the two abutments claimed.

The subject matter of claims 13 to 16 is now incorporated into the specification. Accordingly, claims 13 to 16 now are properly enabled by the specification as required by 35 U.S.C. § 112, first paragraph. Reconsideration and withdrawal of this rejection is respectfully requested.

In the Office Action, claims 1 to 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. Des. 216,349 to Bomeisler et al. (hereinafter "the Bomeisler et al. design patent") in view of U.S. Patent No. 3,282,462 to Box (hereinafter "the Box patent"). Applicants respectfully traverse this rejection on the grounds that the Bomeisler et al. design patent in combination with the Box patent do not disclose all of the elements set forth in claims 1 to 3.

Claim 1 provides for a hair setting assembly. The assembly includes *inter alia*, a lid hingedly mounted to the housing for selectively covering one or more heatable hair rollers and a lid having at least two sections each individually mounted by a single pivot to said housing.

The Bomeisler et al. design patent is directed to a heater housing design for hair curlers having a two-part cover in which each part of the cover is connected at the same sides of the housing. The Bomeisler et al. design patent does not disclose a lid capable of selectively covering heatable hair rollers or a lid having at least two sections each individually hingedly mounted by a single pivot to the housing, as provided by claim 1.

The Box patent is directed to a plastic carrying case having two integral lid parts that fold at a pivot line. The lid parts of the Box patent are integrally molded with the sidewalls and fold at a pivot line formed from a series of spaced slots (column 4, lines 9 to 12). Regarding, claim 1, the Box patent does not disclose a lid having at least two sections each individually mounted by a single pivot to the housing. In contrast, the lid sections are not mounted to the housing, but are integrally formed with the walls of the housing (column 3, lines 17 to 25). Further, the Box patent does not disclose lids each individually mounted by a single pivot, but instead by a plurality of pivots provided by slots 24 along the pivot line (column 4, lines 9 to 12).

Accordingly, neither the Bomeisler et al. design patent nor the Box patent, either alone or in combination, disclose or suggest the elements of claim 1.

Further, the Office Action, in reference to the Box patent, suggests that the "each of the lid sections of a container/case may be respectively pivotally attached by a

single pivot". The Office Action continues to state that "this would apparently provide room for side strengthening ribs in the adjacent walls of the container to provide improved mechanical stability and resistance to forces and loads". Applicants are unclear how single pivots would provide room for side strengthening ribs in the adjacent walls of the container or permit such strengthening after reviewing column 2, lines 52 of the patent. The pivot or hinge of the Box patent is addressed two paragraphs later in a context that has no bearing on the mechanical stability of the carrying case.

Furthermore, even assuming there was a relationship between the pivots and the strength of the walls, which there is not, there is no motivation to combine the Bomeisler et al. design patent with the Box et al. patent, absent hindsight from Applicants' claimed invention. Specifically, the Office Action states that:

[I]t would have been obvious in view of Box to have formed the lid sections of Bomeisler et al. for a single pivot connection (opposed to the free end) and to have made each lid section thereby pivotally connected to the housing along a single pivot, so as to permit room for strengthening ribs in adjacent container walls for providing stability and force resistance to the container. (pages 5 to 6)

Applicants do not believe that this statement provides the necessary motivation to combine the Bomeisler et al design patent with the Box patent. The Bomeisler et al. design patent is used to carry at most thirteen hair rollers. In contrast, the Box patent discloses a carrying case to carry

glass bottles, cartons of milk, beer and other such items. There is no motivation to strengthen the design of the Bomeisler et al. design patent in such a way that is taught by the Box patent.

Still further, the proposed modification of the Bomeisler et al. design patent in combination with the Box patent would destroy the operation of Bomeisler et al design patent. Specifically, the pivot at the back of each lid part of Bomeisler et al. would render the lids unopenable because rotation of the lids at the pivot line would cause them to abut each other. In addition to being unopenable, the proposed combination would not allow for selectively covering the one or more heatable hair rollers, as claimed in claim 1.

For these reasons, the Bomeisler et al. patent and the Box patent do not render claim 1 obvious. Thus, applicants request reconsideration and withdrawal of this rejection.

Claim 2 depends from claim 1 and provides, *inter alia*, at least two sections that are pivotally connected at opposing ends.

The Bomeisler et al. design patent, as discussed above, discloses two lid sections that are pivotally connected at the same end. The Box patent discloses a lid that is connected at opposite ends, but by multiple pivots. For the reasons discussed above regarding claim 1, the

combination of the Bomeisler et al. design patent in view of the Box patent also does not make claim 2 obvious.

Claim 3 depends from claim 1 and provides for at least two sections that seal along a mid-line running from a front side of said housing to a rear side of said housing.

The Office Action states that upon closure of the lid sections, they abut/seal at a mid-line between opposed sides of the device. Applicants respectfully disagree. Neither Figs. 2 or 3 of the Bomeisler et al. design patent, nor the Box patent, disclose at least two sections that seal along the mid-line from a front side of said housing to a rear side of said housing. In fact, both the Bomeisler et al. patent and the Box patent disclose a device that opens along a longitudinal axis that is not along the mid-line running from a front side of the housing to a rear side of the housing, as claimed. The seal traverses a shorter distance by running from a front side of the housing to a rear side of the housing, in comparison to a seal traversing the longitudinal axis. By the traversing the longer longitudinal axis, the seal allows greater heat dissipation.

The combination of Bomeisler et al. design patent and the Box patent does not overcome the defect of the Bomeisler et al. patent with respect to claim 3. As such, the combination of Bomeisler et al. in view of the Box patent does not make the claim 3 obvious.

In the Office Action, claims 1 through 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design Patent No. 323,041 to Montagnino et al. (hereinafter "the Montagnino et al. design patent (041)) in view of the Box patent.

The Montagnino et al. design patent (041) is directed to a portable housing for a hair setter showing two covers that close along a longitudinal line and are pivotally connected to a housing at the same end, much like the lid of the Bomeisler design patent. As such, the Box patent, discussed above, does not correct the defects of the Montagnino patent with respect to claims 1 to 3. Specifically, the Box patent discloses two lids each connected by multiple pivots that seal along a longitudinal axis. The Montagnino et al. design patent (041) in combination with the Box patent also does not render claims 1 to 3 obvious for the same reasons discussed above.

Further, the Office Action states that "it is noted that no advantage is indicated in Applicant's disclosure for a single lid section pivot as opposed to multiple pivots". In fact, claim 1 provides a "lid having at least two sections". The disclosure at page 7, lines 11 to 14, states that the "split lid arrangement heretofore preferably described allows for selective access to rollers 40. This selective access helps to reduce heat loss and improve efficiency". Furthermore, were more than two lid sections each having multiple pivots at opposite sides of the housing provided, the Montagnino et al. design patent,

would be inoperable because the lid sections would overlap. Therefore, the single lid section pivot is advantageous.

Claim 4 depends from claim 1 and provides that each of said at least two sections have one or more channels.

Claim 5 depends from claim 4 and provides that the one or more channels function to collect accumulated condensation from said lid and direct said condensation to said at least one reservoir in said housing.

The Office Action states that "on each side of the handle element, the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing. Applicants respectfully disagree.

The Montagnino et al. design patent (041) is directed to a housing for a hair setter. The Montagnino et al. design patent (041) shows two lid portions having broad spaces on opposite sides of the interior of the handle portion when the device is in a closed position. However, these broad spaces could not be used to "collect accumulated condensation from the lid and direct said condensation to said at least on reservoir in said housing" as claimed. From Figs. 4 and 6 of the Montagnino et al. design patent (041), any condensation could not collect in any reservoir because no such element is shown. Instead, the condensation would fall outside the housing onto the supporting surface.

Any modification by the Box patent, although the Office Action did not offer a proper motivation, does not correct the defect of the Montagnino et al. design patent (041).

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as unpatentable over the Montagnino et al. design patent (041) in view of the Box patent and further in view of U.S. Patent No. 3,700,855 to Jensen et al. (hereinafter "the Jensen et al. patent").

The Office Action states that "an enclosure for curlers may include a steaming means and that the underside of a lid of an enclosure for curlers/rollers may include channels (pyramidal shapes 7,8) that direct/channel condensation to the reservoir of the housing/casing, for the purpose of wetting curlers/rollers in the reservoir . . .". (page 6). Further, the Office Action states that "it would have been obvious to have provided the lid of the housing of Montagnino et al. [sic] with condensation channels and to have provided the housing with a steaming means . . . for the purpose of wetting the curlers/rollers and recirculating moisture within the housing.". (page 6)

Applicants respectfully disagree. There is no motivation to modify the Montagnino et al. design patent (041) by the Box patent and by the Jensen et al. patent even if the lid did show at least two sections having one or two channels as provided by claim 4. The Jensen et al. patent provides for a lid having multiple pyramids to collect condensation in the housing to drop over the

curlers. In claim 5, the lid has one or more channels that function to collect accumulated condensation from the lid to direct the condensation to at least one reservoir in the housing. The Montagnino et al. design patent (041) is concerned, if at all, with removing condensation from the housing, whereas the Jensen et al. patent is concerned with collecting condensation for use in the housing. The Box patent does not address any channels.

For the reasons stated above, the combination of references cited above does not make obvious the claimed invention.

Furthermore, the combination would destroy the function of the primary reference. The Montagnino et al. patent (041) appears to use dry heat to heat the rollers, whereas the Jensen patent uses vaporized liquid that drips from apexes to heat the rollers. One of ordinary skill in the art would not change the primary reference as suggested.

In the Office Action, claims 6 through 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Montagnino et al. design patent (041) in view of U.S. Patent No. 2,659,920 to Bogan et al. (hereinafter "the Bogan et al. patent").

Claim 6 provides for a hair setting assembly having, *inter alia*, a housing and a base connected to the housing so that the housing can move on the base.

The Office Action states in reference to the Bogan et al. patent that:

[A] container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided, having with [sic] means (spaced concave members 14) for connected the vase to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user for the purpose of providing access to the contents of the container. (page 7)

The Office Action offers that it would have been obvious to have made the container of the Montagnino et al. design patent with a base for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing. Applicants respectfully disagree.

There is no motivation for the combination of references absent improper hindsight gained from the Applicants' application. Specifically, the Montagnino et al. design patent offers no motivation to modify the lower flat surface of the roller holder that rests on a flat surface because there is no desire to tilt the holder. There is also no rationale to provide a base that is connected to the housing. Furthermore, the Bogan et al. patent offers no reason to modify such a device as shown in the Montagnino et al. design patent. Specifically, the containers that are to be modified by the Bogan et al. patent are for nail polish bottles, ink holders, shoe

polish and perfumes (column 2, lines 10 to 22). The types of devices referenced in the Bogan et al. patent are small holding devices, not large devices like that shown in the Montagnino et al. design patent.

Furthermore, the Office Action argues that the feet of the Montagnino et al design patent suggest placement on a base. Applicants respectfully disagree. The feet only suggest placement on a flat surface such as the one shown in the reference, not an additional element of the invention structured as a base. Applicants requests reconsideration and withdrawal of this rejection.

Claim 7 now provides that the hair setting assembly have, *inter alia*, a housing that can be tilted about a horizontal axis of rotation that is perpendicular to the vertical extent of the housing.

Claim 8, depends from claim 7 and now provides that the housing can be tilted about the horizontal axis through a predetermined angle.

Claims 7 and 8 were not directly addressed in the Office Action. The Bogan et al. patent does not disclose or suggest a housing that can be tilted about a horizontal axis of rotation, as claimed. The Bogan et al. patent does not have a horizontal axis because the container is spherical. As such, the combination of the Bogan et al. patent in combination with the Montagnino et al. design patent also does not render claims 7 and 8 obvious for this additional reason as well.

Independent claim 9 provides a hair setting assembly comprising, *inter alia*, a base; a housing supported on the base for pivotal movement with respect to the base, and a lid being configured to channel accumulated condensation from the lid into a reservoir into the housing.

As discussed previously, the Montagnino et al. design patent and the Bogan et al. patent do not disclose or suggest a housing supported on a base for pivotal movement with respect to the base as claimed. Further, as discussed above, the Montagnino et al. design patent does not disclose or suggest a lid being configured to channel accumulated condensation from the lid into a reservoir into the housing, as claimed. The Bogan et al. patent does not correct this defect. As such, the Montagnino et al. design patent does not render claim 9 obvious. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 11 provides for a hair setting assembly wherein the at least two sections are connected at opposing ends of the housing.

As discussed previously, the Montagnino et al. design patent does not disclose a container having two sections that are connected at opposing ends of the housing as claimed. In contrast, they are connected at the same end of the housing (Figures 4 and 6). The Bogan et al. patent does not correct this defect. As such, reconsideration and withdrawal of this rejection are respectfully requested.

Claim 12 provides for a hair setting assembly wherein the at least two sections seal along a mid-line running from a front side of the housing to a rear side.

As discussed above with respect to claim 3, neither Figs. 5 nor 7 of the Montagnino et al. design patent (041) show lid sections that seal along the mid-line of the housing, let alone a mid-line running from a front side of said housing to a rear side of said housing. As also discussed above, the seal is significant because it will prevent heat loss and improve efficiency. (page 7, lines 11 to 14). Instead, the Montagnino et al. design patent (041) shows a device that closes along the longitudinal axis of the housing; however, it does not seal the two lids as claimed. The Bogan et al. patent does not correct this defect. As such, reconsideration and withdrawal of the rejection are respectfully requested.

In the Office Action, claims 6 through 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Montagnino et al. design patent (041) in view of the Jensen et al. patent, as applied to claim 5 above and further in view of the Bogan et al patent.

The Montagnino et al. design patent and the Box patent were previously combined with the Jensen et al. patent with respect to claims 4 and 5, apparently for the purpose of teaching condensation channels. There was not a proper motivation for that combination as discussed above. The Montagnino et al. design patent (041) is concerned, if at all, with removing condensation from the housing, whereas

the Jensen et al. patent is concerned with collecting condensation for use in the housing.

Alternatively, assuming the Montagnino et al. design patent is not at all concerned with removal of moisture or with dry heating as offered by the Office Action (p. 11), any modification by the Jensen et al. patent again fails for lack of motivation. There would not be any motivation to modify the lid of the device of the Montagnino et al. design patent as taught by the lid of the Jensen et al. patent for any reason, let alone for reasons related to channeling condensation. From the abstract of the Jensen et al. patent, the specific design of the lid and the projections allow for controlling the amount of condensing liquid and distribution of the condensing liquid onto the curlers. One of ordinary skill in the art would not modify the lid of a device not concerned with channeling condensation with the lid of the Jensen et al. patent.

Additionally, the Montagnino et al. design patent was combined the Bogan et al. patent to apparently teach a container that is connected to a base. As discussed above, with respect to claims 6 through 9, there was not a motivation for this combination absent improper hindsight. Further, one of ordinary skill would not have modified the roller container of the Montagnino et al. design patent because the container is not of the type for which such a modification was considered in the Bogan et al. patent (Column 2, lines 10 to 22).

In the Office Action, claims 9 through 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Montagnino et al. design patent (041).

As discussed previously, the Montagnino et al. design patent does not disclose or suggest the claimed subject matter of claims 9 through 12. The Montagnino et al. design patent does not disclose or suggest a hair setting assembly having a base; a housing supported on the base, for pivotal movement with respect to the base, and a lid being configured to channel accumulated condensation from the lid into a reservoir into the housing.

With respect to claim 11, the Montagnino et al. design patent does not disclose the hair setting assembly of claim 10 (and thus claim 9) wherein the at least two sections are connected at opposing ends of the housing. In contrast, the connections are at the same ends of the housing.

With respect to claim 12, the Montagnino et al. design patent does not disclose a hair setting assembly wherein the at least two sections seal along a mid-line running from a front side of the housing to a rear side, as claimed. In contrast, the Montagnino et al. design patent shows a device that closes along a longitudinal axis that is not from a mid-line running from front to back as claimed.

The Office Action states that "the bottom of the housing of the Montagnino et al is provided with feet. . .

This suggests resting the housing on a supporting surface/base, such as a table or counter, such that it would have been obvious from the feet to have rested the housing on such a supporting surface or base." (page 9) It further suggests that "the housing is capable of being pivoted with respect to such a supporting surface or base." (page 9).

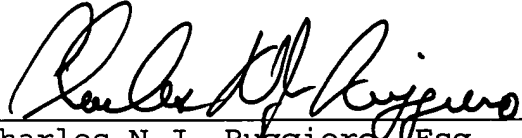
Applicants respectfully disagree. The Montagnino et al. design patent (041) shows a device with a two-part lid and a lower housing. The feet of Figs. 4 and 6 do not suggest the element of the base of claim 9, let alone any pivotal movement of the housing with respect to said base as claimed. The feet only suggest placement of the device of the Montagnino et al. design patent on a flat surface, not on a separate additional element of a base.

Claim 10 depends from claim 9 and is also allowable for the reasons discussed above with respect to claim 9.

In view of the foregoing, Applicants respectfully submit that all claims presented in the application patently distinguish over the cited prior art and the cited combinations of same. Accordingly, Applicants respectfully request favorable consideration and that this application be passed on to allowance.

Respectfully submitted,

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Date

A handwritten signature in dark ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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